

**ACTION:** Final rule.

**SUMMARY:** This rule redesignates an extension in the 700-foot transition area and corrects the name and geographic location of a nonfederal, nondirectional radio beacon. This action provides controlled airspace required to protect instrument flight operations at the Ocracoke Island Airport.

**EFFECTIVE DATE:** 0901 GMT, February 19, 1981.

**ADDRESS:** Federal Aviation Administration, Chief, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320.

**FOR FURTHER INFORMATION CONTACT:** Harlen D. Phillips, Airspace and Procedures Branch, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: 404-763-7646.

**SUPPLEMENTARY INFORMATION:** In the Ocracoke, North Carolina, Transition Area described in § 71.181 (46 FR 540), an extension was designated on the 059° bearing from the proposed Ocracoke RBN to provide controlled airspace for aircraft executing the NDB Runway 25 standard instrument approach procedure at the Ocracoke Island Airport. The approach course has changed from northeast to northwest of the airport because the proposed RBN location has been changed from on-airport to 1.5 miles northwest. Due to the off-airport location, the RBN has been renamed Pamlico.

It is necessary to redesignate the extension and correct the RBN name and location in order to provide controlled airspace to protect instrument flight operations at the airport. The establishment of the RBN, which will support the new NDB-A approach procedure, is presently being accomplished.

In the interest of safety, it is found that notice and public procedure hereon are impracticable and contrary to the public interest.

**Adoption of the Amendment**

Accordingly, Subpart G, § 71.181 (46 FR 540) of Part 71 of the Federal Aviation Regulations (14 CFR 71) is amended, effective 0901 GMT, February 19, 1981, as follows:

**Ocracoke, North Carolina**

The present description is deleted and "... That airspace extending upward from 700 feet above the surface within a 5-mile radius of Ocracoke Island Airport (Lat. 35°08'04" N., Long. 75°57'57" W.); within 4 miles each side of the 324° bearing from the Pamlico RBN (Lat. 35°08'59" N., Long. 75°59'16" W.), extending from the 5-mile radius area to 11.5 miles northwest of the RBN, excluding the portion outside the

continental limits of the United States. . . " is substituted therefor.

(Sec. 307(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)) and Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1855(c)))

**Note.**—The Federal Aviation Administration has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in East Point, Georgia, on January 12, 1981.

George R. LaCaille,  
Acting Director, Southern Region.

[FR Doc. 81-2350 Filed 1-23-81; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 129**

[Docket No. 19726; Amdt. Nos. 107-1, 108 (New), 121-167, 129-11, and 135-10]

**Airplane and Airport Operator Security Rules****Correction**

In FR Doc. 81-1403, published in the issue of Thursday, January 15, 1981, at page 3782 make the following correction to § 129.25(b)(4).

On page 3790, third column, fifth full paragraph from the top of the page, in the first line of paragraph (4), the reference now reading "Paragraph (c) of this section \* \* \*" should read "Paragraph (d) of this section \* \* \*".

BILLING CODE 1505-01-M

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****15 CFR Part 936****The Point Reyes-Farallon Islands National Marine Sanctuary**

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

**ACTION:** Final rule.

**SUMMARY:** The Office of Coastal Zone Management within NOAA is issuing the Designation and final regulations for the Point Reyes-Farallon Islands National Marine Sanctuary off the coast of California (the Sanctuary). The Sanctuary was designated on January

16, 1981, after receiving Presidential approval on January 16, 1981. The Designation Document acts as a constitution for the Sanctuary, establishing its boundaries, purposes, and the activities subject to regulation. The regulations establish, in accordance with the terms of the Designation, the limitations and prohibitions on the activities regulated within the Sanctuary, the procedures by which persons may obtain permits for prohibited activities, and the penalties for committing prohibited activities.

**DATE:** These implementing regulations are expected to become effective upon the expiration of a period of 60 calendar days of continuous session of Congress after their transmittal to Congress concurrent with publication. This 60-day period is interrupted if Congress takes certain adjournments and the continuity of session is broken by an adjournment *sine die*. During the first 60 days after publication the Governor of California may certify that any terms of the Designation are unacceptable as they apply to State waters, in which case the Designation and regulations shall be modified and may be withdrawn entirely. Therefore, the effective date can be determined by calling or writing the contact identified below. Notification will also be published in the Federal Register when the regulations become effective.

**ADDRESS:** NOAA invites public review and comment on these final regulations. Written comments should be submitted to: Director, Sanctuary Programs Office, Office of Coastal Zone Management, National Oceanic and Atmospheric Administration, 3300 Whitehaven Street, NW., Washington, D.C. 20235.

**FOR FURTHER INFORMATION CONTACT:** Dallas Miner, Director, Sanctuary Programs Office, Office of Coastal Zone Management, 3300 Whitehaven Street, NW., Washington, D.C. 20235, (202) 634-4236.

**SUPPLEMENTARY INFORMATION:** Title III of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431-1434 (the Act), authorizes the Secretary of Commerce, with Presidential approval, to designate ocean waters as far seaward as the outer edge of the Continental Shelf as marine sanctuaries to preserve or restore distinctive conservation, recreational, ecological, or aesthetic values. Section 302(f)(2) of the Act directs the Secretary to issue necessary and reasonable regulations to control activities permitted within a designated marine sanctuary. The authority of the Secretary to administer the provisions of the Act has been delegated to the



Assistant Administrator for Coastal Zone Management within the National Oceanic and Atmospheric Administration, U.S. Department of Commerce (the Assistant Administrator).

On January 16, 1981, the Assistant Administrator received the President's approval to designate as a national marine sanctuary an area of the waters off the coast of California between the Farallon Islands and the mainland from Point Reyes Headlands to Rocky Point extending seaward to a distance of 3 nautical miles (nmi) beyond territorial waters along the mainland, and out to 12 nmi from the mean high tide line of the Farallon Islands. This area was so designated on January 16, 1981.

However, since the Sanctuary includes waters within the seaward boundary of the State of California, the Governor of California has 60 days in which to certify that any of the terms of the Designation are unacceptable to the State, in which case the terms certified will not become effective within State waters. In this event, the regulations must be modified accordingly or the entire Designation may be withdrawn if it no longer meets the objectives of the Act, the regulations, and the original Designation (see 15 CFR 922.26(e)).

In addition the Act, as amended by Public Law 96-332, provides that the Designation becomes effective unless Congress disapproves it or any of the terms by a concurrent resolution adopted by both Houses "before the end of the first period of sixty calendar days of continuous session" after transmittal of the Designation to Congress (Sections 302(b)(1) and 302(h)). As noted by the President in his statement of August 29, 1980, signing Public Law 96-332, this provision raises constitutional questions but will be treated as a "report-and-wait" provision in accordance with that statement. Consequently, the regulations will not become effective until after the 60-day period described in Section 302(h). This period does not include those days on which either House is adjourned for more than 3 days to a day certain and is broken by an adjourned *sine die*. In view of Congress' schedule for the next few months, it is unlikely that these regulations will be effective before April 1981. Notification of the effective date will be published in the Federal Register at that time.

The waters included in the Sanctuary contain a variety of marine and nearshore habitats including bays, estuaries, rocky shores, grass beds, nesting sites, haulout areas and kelp beds. Topography and currents render the region one of the most productive off

California. Marine mammals, birds, fish, plants and benthic resources are abundant in the Sanctuary year round. Although the area is close to several large metropolitan areas and sustains a variety of human uses, the rugged coastline remains undeveloped, and a large portion is protected by the Point Reyes National Seashore. However, use of the natural resources of the Point Reyes-Farallon Islands waters is increasing, and additional pressure is being placed on these resources from a number of human activities.

Accordingly, the primary purpose of managing the area and of these implementing regulations is to protect and to preserve the marine birds and mammals, their habitats, and other natural resources from those activities which pose significant threats. Such activities include: hydrocarbon exploration and exploitation except for the laying of pipeline outside 2 nmi from the Islands, Bolinas Lagoon or Areas of Special Biological Significance (Section 936.6(a)(1)); discharges except for fish cleaning wastes and chumming materials, certain discharges incidental to vessel use of the area such as effluents from marine sanitation devices, engine exhaust and cooling waters, biodegradable galley wastes, and deck wash down, and municipal waste outfalls and dredge disposal with a certified permit (Section 936.6(a)(2)); construction on or alteration of the seabed except for navigational aids, for certified pipelines or outfalls, and for certain other minor activities (Section 936.6(a)(3)); the unnecessary operation of certain commercial vessels within 2 nmi of sensitive habitats and the operation of certain aircraft at lower than 1000 feet within 1 nmi of these areas (Section 936.6(a)(4) and (5)); and removing or harming historical or cultural resources (Section 936.6(a)(6)). All prohibitions must be applied consistently with recognized principles of international law.

The regulation of fishing in the Sanctuary waters will remain the responsibility of the California Department of Fish and Game, the Pacific Regional Fishery Management Council, and the National Marine Fisheries Service pursuant to the Fishery Conservation and Management Act of 1976, 16 U.S.C. 1801 *et seq.*, (see Article 5, Section 1 of the Designation Document), although fishing vessels are subject to the same discharge regulations as other vessels (Section 936.6(a)(2)).

On March 31, 1980 NOAA published proposed regulations for the Sanctuary in the Federal Register (45 FR 20907) and

at the same time issued a Draft Environmental Impact Statement (DEIS) which described in detail the proposed regulatory regime and alternatives to it. After consideration of the comments, an FEIS was issued on October 3, 1980, which described a somewhat revised regulatory regime. Some additional comments were received on the FEIS, but the regulations discussed in the FEIS and those published here are substantially identical. The significant comments on the proposed regulations and the regulatory elements of the impact statements and NOAA's responses to them follow:

(1) *Comment:* Certain commenters maintained that no sanctuary should be designated since existing regulatory authorities already provide enough protection for the natural resources. They felt a marine sanctuary would only add an unnecessary and expensive layer of Federal bureaucracy.

*Response:* The many Federal and State agencies which exercise authority in the Point Reyes-Farallon Islands area provide a considerable degree of regulatory protection. However, no mechanism currently exists to provide comprehensive management, research, coordination, and assessment for the extraordinary diversity of natural resources concentrated in the waters around Point Reyes and the Farallon Islands.

The marine sanctuary program, unlike other programs which have jurisdiction in the area of the proposed sanctuary, provides a mechanism to focus on this particular geographically defined marine area and to provide comprehensive management and planning to protect the resources of the site. Other statutes either focus on management of much smaller areas, single resources, or have resource protection only as an ancillary goal. Marine sanctuary planning and management also provides for research and monitoring of the condition of the resources to assure long-term protection and maximum safe use and enjoyment; other statutes do not provide in most cases the same geographically focused, comprehensive research and monitoring effort. An educational/interpretive element of the program heightens public awareness of the value of the resources and thereby reduces the potential for harm; again, this aspect of the marine sanctuary program is unavailable under the present system.

Although certain uses of the area do not now seriously threaten resource quality, their impacts will become more significant as activities increase. The current multitude of regulatory authorities, many of which have different objectives and jurisdictions, are unlikely to be able to respond to future activities on the basis of ecosystem issues. Because these waters contain so many beneficial uses, the special planning and study possible in a marine sanctuary is necessary to ensure that they are used and preserved in the future as effectively as possible.

(2) *Comment:* The proposed regulation prohibiting the dumping of dredge materials in the marine sanctuary should be changed so that NOAA can allow the disposal of



nontoxic, dredged material in the marine sanctuary on a case-by-case basis.

**Response:** Until the designation of the permanent disposal site, NOAA will allow the continued use of the interim site, on a case-by-case basis. Other than for disposal at the existing interim site, NOAA has not modified its proposed prohibition of ocean dumping. Since it appears that the permanent disposal site will be established outside the proposed sanctuary boundaries, further modification of the proposed regulation was unnecessary. Certain potentially harmful effects will be avoided by the proposed regulation. The disposal of dredged material may harm marine biota by smothering and increased turbidity, even if the material is not toxic. These effects of ocean dumping are likely to cause the most damage in shallow, nearshore waters that have a high concentration of benthic organisms. In addition, dumping may interfere with fish trawling operations in waters less than 100 fathoms (183 m).

The Assistant Administrator for Coastal Zone Management must certify each permit for ocean dumping or proposed Corps of Engineers (COE) disposal activities at the interim site as consistent with the purposes of the sanctuary. Because of the infrequent use of the site and existing regulations on disposal, the disposal will not pose threats to sanctuary resources, nor will the certification of permits at the interim site be administratively burdensome. First, the interim disposal site has not been used since 1978. Between 1975 and 1978 about 50,000 cubic feet per year were dumped at the 100 fathom site. However, several dredging projects currently in various stages of planning may require deep ocean disposal before the final designation of a disposal site in 1982. Plans currently call for all dredged material disposal at the Alcatraz disposal site within San Francisco Bay, largely because of the great expense of transporting dredged material to the interim dumpsite.

Second, under the 1977 regulations issued pursuant to the Marine Protection Research, and Sanctuaries Act of 1972 (MPRSA), no ocean disposal of "toxic" wastes is allowed. All proposed dumping must comply with the regulations implementing Title I of the MPRSA, including findings that the activity will not "unduly degrade" the marine ecosystem. (42 FR 2477, Part 922, Subpart B). Thus, although before those regulations went into effect the 100 fathom site might have been used for disposing dredged material classified as polluted, the current regulations impose more protective standards to control use of the interim site. Certification will assure a special review by NOAA which will take into account the possible impacts described above.

(3) **Comment:** Section 936.6(a)(4) of the proposed regulations which prohibits, to the extent consistent with international law, vessels engaged in the trade of carrying cargo or supplying offshore hydrocarbon installations from entering the waters within one nautical mile of the Farallon Islands, Bolinas Lagoon, and Areas of Special Biological Significance designated by the State, should be amended to exclude such vessel traffic from two nautical miles around these sensitive areas.

**Response:** NOAA has adopted this recommendation. The expanded area would provide a greater measure of assurance that marine mammals and birds in such a sensitive area would not be disturbed by such vessel traffic. It would also increase the buffer zone between sensitive habitat and any pollutants from vessel operations or accidents. While discharge of oil is prohibited in the area by other authorities, a buffer zone is the only viable protection from the impacts of accidental discharges. The expanded buffer zone would not conflict with any customary shipping routes or with any of the options considered by the U.S. Coast Guard in its port access routes study for this area, and would not impose any additional costs on shipping. Any potential increase in the cost of enforcing sanctuary regulations is justified by the added environmental protection.

(4) **Comment:** The sanctuary regulations should require vessels transiting the sanctuary to adhere to the U.S. Coast Guard's Vessel Traffic Separation Scheme (VTSS). Some commenters also suggested that tankers and barges transporting hydrocarbons be excluded from the proposed sanctuary.

**Response:** Although the suggested changes might decrease the risks of vessel accidents and associated polluting incidents to some presently unquantifiable degree, the provisions appear premature in light of the on-going Coast Guard evaluation of vessel routing issues. NOAA will coordinate its future review of both these issues closely with the Coast Guard after the results of the study are available.

The Coast Guard estimates that virtually all commercial vessel traffic currently complies with the San Francisco VTSS. Making the VTSS mandatory within the sanctuary would therefore not substantially change present operating conditions. In addition, under International Law, foreign flag vessels beyond the limits of the territorial sea cannot be regulated except under limited circumstances. Any regulation of navigation on the high seas must be endorsed by the International Maritime Consultative Organization (IMCO) to be recognized under international law, and apply to foreign flag traffic.

The Coast Guard must seek IMCO's designation of any mandatory Port Access Route (PAR) or VTSS in international waters. Thus the full cooperation of the Coast Guard is essential in order to deal effectively with vessel navigation issues. The Coast Guard is currently conducting a port access route study for the central and northern California Coast, and the entrance to San Francisco is under careful consideration as part of the study. Under the 1978 amendments to the Ports and Waterways Safety Act, the Coast Guard has the authority to make shipping lanes mandatory and will exercise that authority if that is the best course of action. Recommendations from the study will be available in January 1981. Several of the options under consideration would eliminate the northern VTSS which goes through the Gulf of the Farallones and would require all vessels to enter San Francisco Bay from either the western or the southern lanes. The

implementation of any such option would virtually eliminate the need for any separate regulation of hydrocarbon transport in the Sanctuary. Even though such a measure would not in itself prohibit vessel traffic, including hydrocarbon transport, through the Sanctuary, failure to utilize a designated VTSS has sufficiently influenced the determination of liability in case of an accident that most ships' masters adhere to such systems and would likely avoid the Gulf. NOAA has commented on the PAR study, and the Coast Guard will take the proposed Point Reyes-Farallon Islands marine sanctuary into consideration in its decision. Finally, NOAA will consult with the Department of the Interior concerning the routing of vessels related to future oil and gas exploration and development.

#### The Designation Document

The Act and NOAA's general marine sanctuary regulations (15 CFR Part 922, 44 FR 44831, July 31, 1979) provide that the management system for a marine sanctuary will be established by two documents, a Designation Document and the regulations issued pursuant to Section 302(f)(2) of the Act. The Designation Document will serve as a constitution for the Sanctuary, establishing among other things the purposes of the Sanctuary, the types of activities that may be subject to regulation within it, and the extent to which other regulatory programs will continue to be effective.

As approved by the President on January 16, 1981, the Point Reyes-Farallon Islands National Marine Sanctuary Designation Document provides as follows:

#### Final Designation Document

##### *Designation of the Point Reyes-Farallon Islands National Marine Sanctuary*

##### *Preamble*

Under the authority of the Marine Protection, Research and Sanctuaries Act of 1972, P.L. 92-532, as amended (the Act), the waters along the Coast of California north and south of Point Reyes Headlands, between Bodega Head and Rocky Point and surrounding the Farallon Islands, are hereby designated a National Marine Sanctuary for the purposes of preserving and protecting this unique and fragile ecological community.

##### *Article 1. Effect of Designation*

Within the area designated as the Point Reyes-Farallon Islands National Marine Sanctuary (the Sanctuary) described in Article 2, the Act authorizes the promulgation of such regulations as are reasonable and necessary to protect the values of the Sanctuary. Article 4 of the Designation lists those activities which may require regulation, but the listing of any activity does not by itself prohibit or restrict it. Restriction or prohibition may be accomplished only through regulation, and additional activities may be regulated only by amending Article 4.

##### *Article 2. Description of the Area*

The Sanctuary consists of an area of the waters adjacent to the Coast of California of approximately 948 square nautical miles (nmi), extending seaward to a distance of 8 nmi from the mainland and 12 nmi from the



Farallon Islands and Noonday Rock, and including the intervening waters. The precise boundaries are defined by regulation.

#### Article 3. Characteristics of the Area That Give it Particular Value

The Sanctuary includes a rich and diverse marine ecosystem and a wide variety of marine habitat, including habitat for 23 species of marine mammals. Rookeries for over half of California's nesting marine birds and nesting area for at least 12 of 16 known U.S. nesting marine birds are found within the boundaries. Abundant fish and shellfish are also found within the Sanctuary.

#### Article 4. Scope of Regulation

Section 1. *Activities Subject to Regulation.* In order to protect the distinctive values of the Sanctuary, the following activities may be regulated within the Sanctuary to the extent necessary to ensure the protection and preservation of its marine features and the ecological, recreational, and aesthetic value of the area:

- a. Hydrocarbon operations.
- b. Discharging or depositing any substance.
- c. Dredging or alteration of, or construction on, the seabed.
- d. Navigation of vessels except fishing vessels or vessels travelling within a Vessel Traffic Separation Scheme or Port Access Route designated by the Coast Guard outside the area 2 nmi from the Farallon Islands, Bolinas Lagoon or any Area of Special Biological Significance, other than that surrounding the Farallon Islands, established by the State of California prior to designation.
- e. Disturbing marine mammals and birds by overflights below 1000 feet.
- f. Removing or otherwise harming cultural or historical resources.

Section 2. *Consistency with International Law.* The regulations governing the activities listed in Section 1 of this Article will apply to foreign flag vessels and persons not citizens of the United States only to the extent consistent with recognized principles of international law, including treaties and international agreements to which the United States is signatory.

Section 3. *Emergency Regulations.* Where essential to prevent immediate, serious, and irreversible damage to the ecosystem of the area, activities other than those listed in Section 1 may be regulated within the limits of the Act on an emergency basis for an interim period not to exceed 120 days, during which an appropriate amendment of this Article will be proposed in accordance with the procedures specified in Article 6.

#### Article 5. Relation to Other Regulatory Programs

Section 1. *Fishing and Waterfowl Hunting.* The regulation of fishing, including fishing for shellfish and invertebrates, and waterfowl hunting, is not authorized under Article 4. However, fishing vessels may be regulated with respect to discharges in accordance with Article 4, Section 1, paragraph (b), and mariculture activities involving alteration or construction of the seabed can be regulated in accordance with Article 4, Section 1, paragraph (c). All regulatory programs pertaining to fishing and to waterfowl

hunting, including regulations promulgated under the California Fish and Game Code and Fishery Management Plans promulgated under the Fishery Conservation and Management Act of 1976, 16 U.S.C. 1801 *et seq.*, will remain in effect, and all permits, licenses, and other authorizations issued pursuant thereto will be valid within the Sanctuary unless authorizing any activity prohibited by any regulation implementing Article 4. Fishing as used in this Article and in Article 4 includes mariculture.

Section 2. *Defense Activities.* The regulation of activities listed in Article 4 shall not prohibit any Department of Defense activity that is essential for national defense or because of emergency. Such activities shall be consistent with the regulations to the maximum extent practicable.

Section 3. *Other Programs.* All applicable regulatory programs will remain in effect, and all permits, licenses, and other authorizations issued pursuant thereto will be valid within the Sanctuary unless authorizing any activity prohibited by any regulation implementing Article 4. The Sanctuary regulations shall set forth any necessary certification procedures.

#### Article 6. Alterations to This Designation

This Designation may be altered only in accordance with the same procedures by which it has been made, including public hearings, consultation with interested Federal and State agencies and the Pacific Regional Fishery Management Council, and approval by the President of the United States.

[End of Designation Document]

Only those activities listed in Article 4 are subject to regulation in the Sanctuary. Before any additional activities may be regulated, the Designation must be amended through the entire designation procedure including public hearings and approval by the President.

#### Public Review and Comment

NOAA invites public review and comment on these final regulations. Written comments should be submitted to: Director, Sanctuary Programs Office, Office of Coastal Zone Management, National Oceanic and Atmospheric Administration, 3300 Whitehaven Street, N.W., Washington, D.C. 20235.

Dated: January 19, 1981.

Donald W. Fowler,

Deputy Assistant Administrator for Coastal Zone Management.

Accordingly, Part 936 is proposed as follows:

#### PART 936—THE POINT REYES/FARALLON ISLANDS MARINE SANCTUARY REGULATIONS

Sec.

- 936.1 Authority.
- 936.2 Purpose.
- 936.3 Boundaries.
- 936.4 Definitions.
- 936.5 Allowed activities.
- 936.6 Prohibited activities.

936.7 Penalties for commission of prohibited acts.

936.8 Permit procedures and criteria.

936.9 Certification of other permits.

936.10 Appeals of administrative action.

Authority: Sec. 302(d), (f), (g), and 303 of Title III, Marine Protection, Research and Sanctuaries Act of 1972, 16 U.S.C. 1431-1434. Sections 302(f), 302(g) and 303 of the Act.

#### § 936.1 Authority.

The Sanctuary has been designated by the Secretary of Commerce pursuant to the authority of Section 302(a) of Title III of the Marine Protection, Research and Sanctuaries Act of 1972, 16 U.S.C. 1431-1434 (the Act). The following regulations are issued pursuant to the authorities of Sections 302(f), 302(g), and 303 of the Act.

#### § 936.2 Purpose.

The purpose of designating the Sanctuary is to protect and preserve the extraordinary ecosystem, including marine birds, mammals, and other natural resources, of the waters surrounding the Farallon Islands and Point Reyes, and to ensure the continued availability of the area as a research and recreational resource.

#### § 936.3 Boundaries.

The Sanctuary consists of an area of the waters adjacent to the coast of California north and south of the Point Reyes Headlands, between Bodega Head and Rocky Point and the Farallon Islands (including Noonday Rock), and includes approximately 948 square nautical miles (nmi<sup>2</sup>). The coordinates are listed in Appendix I.

The shoreward boundary follows the mean high tide line and the seaward limit of Point Reyes National Seashore. Between Bodega Head and Point Reyes Headlands, the Sanctuary extends seaward 3 nmi beyond State waters. The Sanctuary also includes the waters within 12 nmi of the Farallon Islands, and between the Islands and the mainland from Point Reyes Headlands to Rocky Point. The Sanctuary includes Bodega Bay, but not Bodega Harbor.

#### § 936.4 Definitions.

(a) "Administrator" means the Administrator of the National Oceanic and Atmospheric Administration.

(b) "Areas of Special Biological Significance" (ASBS) means those areas established by the State of California prior to the designation of the sanctuary except that for purposes of these regulations, the area established around the Farallon Islands shall not be included.

(c) "Assistant Administrator" means the Assistant Administrator for Coastal



Zone Management, National Oceanic and Atmospheric Administration.

(d) "Person" means any private individual, partnership, corporation, or other entity; or any officer, employee, agent, department, agency or instrumentality of the Federal Government or any State or local unit of government.

(e) "Vessel" means watercraft of any description capable of being used as a means of transportation on the waters of the Sanctuary.

#### § 936.5 Allowed activities.

All activities except those specifically prohibited by Section 936.6 may be carried on in the Sanctuary subject to all prohibitions, restrictions, and conditions imposed by any other authority. Recreational use of the area is encouraged.

#### § 936.6 Prohibited activities.

(a) Except as may be necessary for national defense, in accordance with Article 5, Section 2 of the Designation, or as may be necessary to respond to an emergency threatening life, property or the environment, the following activities are prohibited within the Sanctuary unless permitted by the Assistant Administrator in accordance with Sections 936.8 or 936.9. All prohibitions shall be applied consistently with international law.

(1) *Hydrocarbon operations.*  
Hydrocarbon exploration, development, and production are prohibited except that pipelines related to operations outside the Sanctuary may be placed at a distance greater than 2 nmi from the Farallon Islands, Bolinas Lagoon, and Areas of Special Biological Significance where certified to have no significant effect on sanctuary resources in accordance with § 936.9.

(2) *Discharge of substances.*  
No person shall deposit or discharge any materials or substances of any kind except:

(i) Fish or parts and chumming materials (bait).  
(ii) Water (including cooling water) and other biodegradable effluents incidental to vessel use of the sanctuary generated by:

(A) marine sanitation devices;  
(B) routine vessel maintenance, e.g., deck wash down;  
(C) engine exhaust; or  
(D) meals on board vessels.

(iii) Dredge material disposed of at the interim dumpsite now established approximately 10 nmi south of the southeast Farallon Island and municipal sewage provided such discharges are certified in accordance with Section 936.9.

(3) *Alteration of or construction on the seabed.*

Except in connection with the laying of pipelines or construction of an outfall if certified in accordance with Section 936.9, no person shall:

(i) Construct any structure other than a navigation aid,

(ii) Drill through the seabed, and

(iii) Dredge or otherwise alter the seabed in any way other than by anchoring vessels or bottom trawling from a commercial fishing vessel, except for routine maintenance and navigation, ecological maintenance, mariculture, and the construction of docks and piers in Tomales Bay.

(4) *Operations of vessels.*

Except to transport persons or supplies to or from islands or mainland areas adjacent to sanctuary waters, within an area extending 2 nautical miles from the Farallon Islands, Bolinas Lagoon, or any Area of Special Biological Significance, no person shall operate any vessel engaged in the trade of carrying cargo, including but not limited to tankers and other bulk carriers and barges, or any vessel engaged in the trade of servicing offshore installations. In no event shall this section be construed to limit access for fishing, recreational or research vessels.

(5) *Disturbing marine mammals and birds.*

No person shall disturb seabirds or marine mammals by flying motorized aircraft at less than 1000 feet over the waters within one nautical mile of the Farallon Islands, Bolinas Lagoon, or any Area of Special Biological Significance except to transport persons or supplies to or from the Islands or for enforcement purposes.

(6) *Removing or damaging historical or cultural resources.*

No person shall remove or damage any historical or cultural resource.

(b) All activities currently carried out by the Department of Defense within the Sanctuary are essential for the national defense and, therefore, not subject to these prohibitions. The exemption of additional activities having significant impacts shall be determined in consultation between the Assistant Administrator and the Department of Defense.

(c) The prohibitions in this section are not based on any claim of territoriality and will be applied to foreign persons and vessels only in accordance with recognized principles of international law, including treaties, conventions, and other international agreements to which the United States is signatory.

#### § 936.7 Penalties for commission of prohibited acts.

(a) Section 303 of the Act authorizes the assessment of a civil penalty of not more than \$50,000 against any person subject to the jurisdiction of the United States for each violation of any regulation issued pursuant to the Act, and further authorizes a proceeding in rem against any vessel used in violation of any such regulation. Procedures are outlined in Subpart D of Part 922 (15 CFR Part 922) of this chapter. Subpart D is applicable to any instance of a violation of these regulations.

#### § 936.8 Permit procedures and criteria.

(a) Any person in possession of a valid permit issued by the Assistant Administrator in accordance with this section may conduct any activity in the Sanctuary, prohibited under Section 936.6, if such an activity is (1) research related to the resources of the Sanctuary, (2) to further the educational value of the Sanctuary, or (3) for salvage or recovery operations.

(b) Permit applications shall be addressed to the Assistant Administrator for Coastal Zone Management, Attn: Office of Coastal Zone Management, Sanctuary Programs Office, National Oceanic and Atmospheric Administration, 3300 Whitehaven Street, N.W., Washington, D.C. 20235. An application shall provide sufficient information to enable the Assistant Administrator to make the determination called for in paragraph (c) below and shall include a description of all activities proposed, the equipment, methods, and personnel (particularly describing relevant experience) involved, and a timetable for completion of the proposed activity. Copies of all other required licenses or permits shall be attached.

(c) In considering whether to grant a permit, the Assistant Administrator shall evaluate (1) the general professional and financial responsibility of the applicant, (2) the appropriateness of the methods envisioned to the purpose(s) of the activity, (3) the extent to which the conduct of any permitted activity may diminish or enhance the value of the Sanctuary, (4) the end value of the activity, and (5) other matters as deemed appropriate.

(d) In considering any application submitted pursuant to this section, the Assistant Administrator may seek and consider the views of any person or entity, within or outside the Federal Government, and may hold a public hearing, as deemed appropriate.

(e) The Assistant Administrator may, at his or her discretion, grant a permit which has been applied for pursuant to



this section, in whole or in part, and subject to such condition(s) as deemed appropriate. The Assistant Administrator or a designated representative may observe any permitted activity and/or require the submission of one or more reports of the status or progress of such activity. Any information obtained will be made available to the public.

(f) The Assistant Administrator may amend, suspend or revoke a permit granted pursuant to this section, in whole or in part, temporarily or indefinitely if the permit holder (the Holder) has violated the terms of the permit or applicable regulations. Any such action will be provided in writing to the Holder, and will include the reason(s) for the action taken. The Holder may appeal the action as provided for in § 936.10.

#### § 936.9 Certification of other permits.

(a) All permits, licenses, and other authorizations issued pursuant to any other authority are hereby certified and shall remain valid if they do not authorize any activity prohibited by § 936.6. Any interested person may request that the Assistant Administrator offer an opinion on whether an activity is prohibited by these regulations.

(b) A permit, license, or other authorization allowing the discharge of municipal sewage, the laying of any pipeline outside 2 nmi from the Farallon Islands, Bolinas Lagoon and Areas of Special Biological Significance, or the disposal of dredge material at the interim dumpsite now established approximately 10 nmi south of the Southeast Farallon Island prior to the selection of a permanent dumpsite shall be valid if certified by the Assistant Administrator as consistent with the purpose of the Sanctuary and having no significant effect on sanctuary resources. Such certification may impose terms and conditions as deemed appropriate to ensure consistency.

(c) In considering whether to make the certifications called for in this section, the Assistant Administrator may seek and consider the views of any other person or entity, within or outside the Federal Government, and may hold a public hearing as deemed appropriate.

(d) Any certification called for in this section shall be presumed unless the Assistant Administrator acts to deny or condition certification within 60 days from the date that the Assistant Administrator receives notice of the proposed permit and the necessary supporting data.

(e) The Assistant Administrator may amend, suspend, or revoke any certification made under this section

whenever continued operation would violate any terms or conditions of the certification. Any such action shall be forwarded in writing to both the holder of the certified permit and the issuing agency and shall set forth reason(s) for the action taken.

(f) Either the holder or the issuing agency may appeal any action conditioning, denying, amending, suspending, or revoking any certification in accordance with the procedure provided for in § 936.10.

#### § 936.10 Appeals of administrative action.

(a) Any interested person (the Appellant) may appeal the granting, denial or conditioning of any permit under § 936.8 to the Administrator of NOAA. In order to be considered by the Administrator, such appeal must be in writing, must state the action(s) appealed, and the reason(s) therefore, and must be submitted within 30 days of the action(s) by the Assistant Administrator. The Appellant may request an informal hearing on the appeal.

(b) Upon receipt of an appeal authorized by this section, the Administrator will notify the permit applicant, if other than the Appellant, and may request such additional information and in such form as will allow action upon the appeal. Upon receipt of sufficient information, the Administrator will decide the appeal in accordance with the criteria defined in Section 936.8(c) as appropriate, based upon information relative to the application on file at OCZM and any additional information, the summary record kept of any hearing, and the Hearing Officer's recommended decision, if any, as provided in paragraph (c) and such other considerations as deemed appropriate. The Administrator will notify all interested persons of the decision, and the reason(s) for the decision, in writing, within 30 days of receipt of sufficient information, unless additional time is needed for a hearing.

(c) If a hearing is requested or if the Administrator determines one is appropriate, the Administrator may grant an informal hearing before a designated Hearing Officer after first giving notice of the time, place, and subject matter of the hearing in the Federal Register. Such hearing must normally be held no later than 30 days following publication of the notice in the Federal Register unless the Hearing Officer extends the time for reasons deemed equitable. The Appellant, the Applicant (if different), and other interested persons (at the discretion of the Hearing Officer) may appear

personally or by counsel at the hearing, and submit material and present arguments as determined appropriate by the Hearing Officer. Within 30 days of the last day of the hearing, the Hearing Officer shall recommend in writing a decision to the Administrator.

(d) The Administrator may adopt the Hearing Officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Administrator shall notify interested persons of the decision, and the reason(s) for the decision, in writing, within 30 days of receipt of the recommended decision of the Hearing Officer. The Administrator's action will constitute final action for the agency for the purposes of the Administrative Procedures Act.

(e) Any time limit prescribed in this section may be extended for a period not to exceed 30 days by the Administrator for good cause upon written request from the Appellant or Applicant stating the reason(s) for the extension.

#### Appendix I.—Point Reyes/Farallon Islands Proposed Marine Sanctuary, California, West Coast, United States

[Listing of "practical" (rounded-off) coordinates for the two boundary alternatives, coordinates have been rounded-off to whole values for seconds of latitude and longitude.]

| Pt. No. | Latitude  | Longitude  |
|---------|-----------|------------|
| 1       | 38°15'50" | 123°10'49" |
| 2       | 38°12'36" | 123°07'05" |
| 3       | 38°09'57" | 123°05'27" |
| 4       | 38°08'27" | 123°04'53" |
| 5       | 38°07'42" | 123°05'11" |
| 6       | 38°06'08" | 123°05'49" |
| 7       | 38°05'27" | 123°06'10" |
| 8       | 38°04'45" | 123°06'29" |
| 9       | 38°03'54" | 123°06'58" |
| 10      | 38°03'08" | 123°07'38" |
| 11      | 37°58'11" | 123°08'44" |
| 12      | 37°57'38" | 123°11'25" |
| 13      | 37°54'19" | 123°17'41" |
| 14      | 37°48'10" | 123°21'20" |
| 15      | 37°43'57" | 123°21'16" |
| 16      | 37°39'38" | 123°19'05" |
| 17      | 37°37'25" | 123°18'39" |
| 18      | 37°36'55" | 123°15'58" |
| 19      | 37°35'30" | 123°13'31" |
| 20      | 37°33'47" | 123°11'51" |
| 21      | 37°31'12" | 123°07'40" |
| 22      | 37°30'30" | 123°05'42" |
| 23      | 37°29'39" | 123°00'24" |
| 24      | 37°30'34" | 122°54'18" |
| 25      | 37°31'48" | 122°51'32" |
| 26      | 37°34'18" | 122°48'10" |
| 27      | 37°36'59" | 122°46'06" |
| 28      | 37°39'59" | 122°45'00" |
| 29      | 37°52'58" | 122°37'35" |
| A-1     | 37°36'05" | 123°14'30" |
| A-2     | 37°38'01" | 123°19'37" |
| A-3     | 37°41'20" | 123°23'30" |
| A-4     | 37°45'34" | 123°25'33" |
| A-5     | 37°50'06" | 123°25'29" |
| A-6     | 37°54'17" | 123°23'18" |
| A-7     | 37°57'32" | 123°19'19" |
| A-8     | 37°59'22" | 123°14'06" |
| A-9     | 37°59'32" | 123°08'25" |

[FR Doc. 81-2483 Filed 1-23-81; 8:45 am]

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## 15 CFR Part 936

## Gray's Reef National Marine Sanctuary

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

**ACTION:** Final rule.

**SUMMARY:** The Office of Coastal Zone Management within NOAA is issuing the Designation and final regulations for the Gray's Reef National Marine Sanctuary, 17.5 nmi east of Sapelo Island, Georgia (the Sanctuary). The Sanctuary was designated on January 16, 1981, after receiving Presidential approval on January 16, 1981. The Designation Document (the Designation) acts as a constitution for the Sanctuary, establishing its boundaries, purposes, and the activities subject to regulation. The regulations establish, in accordance with the terms of the Designation, the limitations and prohibitions on activities regulated within the Sanctuary, the procedures by which persons may obtain permits for otherwise prohibited activities, and the penalties for committing prohibited actions.

**DATE:** These implementing regulations are expected to become effective upon the expiration of a period of 60 calendar days of continuous session of Congress after their transmittal to Congress, concurrent with publication. This 60-day period is interrupted if Congress takes certain adjournments and the continuity of session is broken by an adjournment *sine die*. Therefore, the effective date can be determined by calling or writing the contact identified below. However, notification will be published in the **Federal Register** when the regulations become effective.

**ADDRESS:** NOAA invites public review and comment on these final regulations. Written comments should be submitted to: Director, Sanctuary Programs Office, Office of Coastal Zone Management, National Oceanic and Atmospheric Administration, 3300 Whitehaven Street, N.W., Washington, D.C. 20235.

**FOR FURTHER INFORMATION CONTACT:** Dr. Nancy Foster, Deputy Director, Sanctuary Programs Office, Office of Coastal Zone Management, 3300 Whitehaven Street, N.W., Washington, D.C. 20235, (202) 634-4236.

**SUPPLEMENTARY INFORMATION:** Title III of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, 16 USC 1431-1434 (the Act) authorizes the Secretary of Commerce, with Presidential approval, to designate ocean waters as far seaward as the outer edge of the Continental Shelf as marine sanctuaries to preserve or

restore distinctive conservational, recreational, ecological, or aesthetic values. Section 302(f)(1) of the Act directs the Secretary to issue necessary and reasonable regulations to control activities permitted within a designated marine sanctuary. The authority of the Secretary to administer the provisions of the Act has been delegated to the Assistant Administrator for Coastal Zone Management within the National Oceanic and Atmospheric Administration, U. S. Department of Commerce (the Assistant Administrator).

On January 16, 1981, the Assistant Administrator received the President's approval to designate as a marine sanctuary a 16.68 square nautical mile (sq nmi) area located 17.5 nmi east of Sapelo Island, Georgia. The area was so designated on January 16, 1981.

The Act, as amended by Public Law 96-332, provides that the Designation becomes effective unless Congress disapproves it or any of its terms by a concurrent resolution adopted by both Houses "before the end of the first period of sixty calendar days of continuous session" after transmittal of the Designation to Congress (Sections 302(b)(1) and 302(h)). As noted by the President in his statement of August 29, 1980, when signing Public Law 96-332, this provision raises constitutional questions but will be treated as a "report-and-wait" provision in accordance with that statement. Consequently, the regulations will not become effective until after the 60-day period described in Section 302(h). This period does not include those days on which either House is adjourned for more than 3 days to a day certain and is broken by an adjournment *sine die*. It is unlikely that these regulations will become effective before April 1981. Notification of the effective date will be published in the **Federal Register** at that time.

The proposed area is a biologically productive live bottom reef on the South Atlantic Continental Shelf which supports representatives of Virginian, Carolinian, and West Indian Biota, including an array of seaweeds, invertebrates, fish, and turtles. The primary purpose of the regulations is to protect and to preserve the live bottom reef ecosystem, including many reef dwelling organisms. Accordingly, all activities which would adversely impact live bottom resources are prohibited, except those permitted by the Assistant Administrator in accordance with § 938.8. Such activities include: alteration of or construction on the seabed (§ 938.8(a)(1)); wire trap fishing

(§ 938.8(a)(4)); bottom trawling and specimen dredging (§ 938.8(5)); and marine specimen collecting (§ 938.8(a)(6)). Similarly, activities harming cultural or historical artifacts in the area are prohibited, except by permit (§ 938.8(a)(7)). Finally, discharge and dumping of polluting materials which could damage the natural values of the area are prohibited (§ 938.8(a)(2)). Spearfishing and anchoring are listed in the Designation as activities potentially subject to regulation, but no regulations are proposed at this time. Vessels will be required to be operated in accordance with Federal rules and regulations (§ 938.8(a)(3)). Except with respect to the deliberate damage to seabed formation, anchoring, the use of certain fishing methods, and discharges, fishing activities at the live bottom are not subject to sanctuary regulation.

On June 11, 1980, NOAA published proposed regulations for the Sanctuary in the **Federal Register** (45 FR 39507) and issued a Draft Environmental Impact Statement (DEIS) which described in detail the proposed regulatory regime and alternatives to it. After consideration of the comments, an FEIS was issued in September 1980. In response to comments on the DEIS, the proposed regulatory regime was revised in the FEIS to list anchoring in the Designation Document but exempt it from regulation at this time. Some additional comments were received on the FEIS, but the regulations discussed in the FEIS and those published here are substantially identical. The more significant comments on the proposed regulations and the regulatory elements of the impact statements and NOAA's responses to them follow:

(1) *Comment:* NOAA's proposal in the DEIS to prohibit anchoring on hard bottom outcrops and to restrict anchoring to sand bottom areas was considered inappropriate by several reviewers who stated that (1) field data showing negative impacts from current anchoring activity was lacking; (2) boaters cannot visually differentiate between hard and soft bottom substrate due to water depth and turbidity; and (3) the regulation would discriminate against user groups which do not have the skill or equipment to locate appropriate anchoring areas.

*Response:* NOAA reevaluated information concerning anchoring at Gray's Reef and decided that anchoring need not be regulated at this time. NOAA has listed anchoring in the Designation and will undertake various management tasks: (1) monitor anchoring practices at Gray's Reef to determine activity levels, gear types,



and environmental impacts; (2) conduct a thorough underwater resource survey to determine the exact nature and extent of hard bottom and soft bottom coverage in the sanctuary; (3) prepare nautical maps for public use showing the bathymetry and geomorphology depicted by the survey mentioned above; (4) study the feasibility of designating anchorage areas with mooring buoys; and (5) educate the user public concerning safe anchoring practices as this information becomes available through environmental impact analysis.

(2) *Comment:* Because knowledge of the extent of live bottom coverage at Gray's Reef is incomplete at this time, a few reviewers recommended that NOAA consider the largest reasonable boundary area or at least an adjustable boundary.

*Response:* The current proposal opts for a conservative 16.68 sq nmi sanctuary area, which includes a previously mapped 12 sq nmi area of intense concentration of live bottom and a quarter nmi extension from the periphery to provide for the inclusion of previously unidentified live bottom. As discussed in the FEIS, the ocean floor of the sanctuary and its immediate surroundings will be surveyed following designation. In the event that the survey reveals significant amounts of additional live bottom habitat that would be suitable for inclusion in the sanctuary, boundary adjustments can be made in accordance with sanctuary program regulations.

(3) *Comment:* Some local fishermen and SCUBA divers took issue with the possible regulation of spearfishing at Gray's Reef, arguing that this activity presently does not threaten resources at the live bottom.

*Response:* Evidence gathered by NOAA through consultation with persons in the field supported the claim that spearfishing does not pose an immediate threat to sanctuary resources. As a result, NOAA determined that spearfishing should not be subject to regulation in the Sanctuary at this time. Spearfishing is listed in the Designation and will be monitored, rather than regulated.

(4) *Comment:* Some reviewers commented that NOAA was giving preferential treatment to hook and line fishing by exempting it from the Designation and potential sanctuary regulation. Similarly, several thought that NOAA was forfeiting its mandate to manage the sanctuary in a comprehensive manner by exempting this activity.

*Response:* NOAA proposes to rely on the South Atlantic Fishery Management

Council (SAFMC) to control hook and line fishing in the sanctuary pursuant to Fishery Management Plans (FMPs). NOAA reviewed draft FMPs and determined that proposed management measures should be adequate to manage hook and line fishing. Fishing by this method is likely to affect sanctuary resources only if the catch level is too high. Setting this level is the responsibility of the SAFMC whose objectives should be consistent with NOAA's. NOAA will monitor all fishing activities at Gray's Reef and will continue to work closely with the SAFMC to ensure that compatible management measures are implemented to maintain and protect fishery resources in the Sanctuary.

(5) *Comment:* A few commentators felt that marine sanctuary status for Gray's Reef was unnecessary, stating that (1) the status quo already provides enough protection and a marine sanctuary would only add an unnecessary and expensive layer of Federal bureaucracy and (2) because Gray's Reef is located 17.5 nmi from shore, factors of distance, weather, sea conditions, and fuel costs limit use of the reef.

*Response:* (1) The many Federal agencies which exercise authority in the proposed area provide a considerable degree of regulatory protection for the resources of the area. However, the extraordinary diversity of natural resources concentrated in the proposed sanctuary deserves additional attention beyond that provided by the present institutional structure.

The marine sanctuary program, unlike other programs which have jurisdiction in the area of the proposed sanctuary, includes a mechanism to focus on this particular geographically defined marine area and to provide comprehensive research and monitoring of the condition of the resources to assure long-term protection and maximum safe use and enjoyment; other statutes do not provide in most cases the same geographically focused, comprehensive research and monitoring effort. An educational element of the program heightens public awareness of the value of the resources and thereby reduces the potential for harm; again, this aspect of the marine sanctuary program is unavailable under the present system.

Although certain uses of the area do not now seriously threaten resource quality, they could have more significant impact when activities increase. The current multitude of regulatory authorities, many of which have different objectives and jurisdictions, may not be able to respond to future activities on the basis of ecosystem issues. Because these waters contain so

many beneficial uses, the special planning and study possible in a marine sanctuary is necessary to ensure that they are used and preserved in the future as effectively as possible.

(2) Gray's Reef is both one of the largest naturally occurring live bottoms in the South Atlantic and the closest known live bottom off Georgia. The average Georgia offshore recreational fishing boat (22 feet and 150-175 horsepower) on an average day (2 to 4 foot seas) departing from Sapelo Sound makes the trip to Gray's Reef in one hour or less.

Unlike tropical reefs farther south, Gray's Reef has been isolated from many human impacts. The availability of nearshore artificial reefs and some natural reefs farther offshore Georgia, the environmental constraints posed by unpredictable weather conditions and distance from shore, and the rural character of coastal Georgia tend to limit use of Gray's Reef. However, use of this area is expected to increase in the future in direct relation to increased demand for marine-related recreation, vessel fuel expenses, and development of domestic energy and fishery resources. Whether coastal Georgia's generally rural composition will act as a deterrent so increased use is not known. With or without sanctuary status, Gray's Reef will remain a favored recreational, educational, and research site.

#### The Designation Document

NOAA's marine sanctuary program regulations (15 CFR Part 922, 44 FR 44831, July 31, 1979) provide that the management regime for a marine sanctuary will be established by two documents, the Designation document (the Designation) and the regulations issued pursuant to Section 302(f) of the Act. The Designation serves as a constitution for the sanctuary, establishing among other things the purpose of the sanctuary, the types of activities that may be subject to regulation within it, and the extent to which other regulatory programs will continue to be effective.

The Gray's Reef National Marine Sanctuary Designation Document is as follows:

#### Final Designation Document— Designation of The Gray's Reef National Marine Sanctuary

##### Preamble

Under the authority of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, (the Act), the waters at Gray's Reef in the South Atlantic Bight off the coast of Georgia are hereby designated a National



Marine Sanctuary for the purposes of: (1) protecting the quality of this unique and fragile ecological community; (2) promoting scientific understanding of this live bottom ecosystem; and (3) enhancing public awareness and wise use of this significant regional resource.

#### Article 1. Effect of Designation

Within the area designated as The Gray's Reef National Marine Sanctuary (the Sanctuary) described in Article 2, the Act authorizes the promulgation of such regulations as are reasonable and necessary to protect the values of the Sanctuary. Article 4 of the Designation lists those activities which may require regulation, but the listing of any activity does not by itself prohibit or restrict it. Restrictions or prohibitions may be accomplished only through regulation, and additional activities may be regulated only by amending Article 4.

#### Article 2. Description of the Area

The Sanctuary consists of an area of high seas waters covering the live bottom which is located 17.5 nmi due east of Sapelo Island, Georgia. Exact coordinates are defined by regulation (§ 938.3).

#### Article 3. Characteristics of the Area

The Sanctuary consists of submerged limestone rock reefs with contiguous shallow-buried hardlayer and soft sedimentary regime which support rich and diverse marine plants, invertebrates, finfish, turtles, and occasional marine mammals in an otherwise sparsely populated expanse of ocean seabed. The area attracts multiple human use, including recreational fishing and diving, scientific research, and educational demonstrations.

#### Article 4. Scope of Regulation

Section 1. *Activities Subject to Regulation.* To ensure the protection and preservation of the Sanctuary's marine features and the ecological, recreational, and aesthetic value of the area, the following activities within the Sanctuary may be regulated to the extent necessary:

- a. Dredging or alteration of, or construction on, the seabed;
- b. Discharging or depositing any substance or object;
- c. Vessel operations, including anchoring;
- d. Wire trap fishing;
- e. Bottom trawling and specimen dredging;
- f. Spearfishing;
- g. Marine specimen collecting; and
- h. Removal of historic or cultural resources.

Section 2. *Consistency With International Law.* The regulations governing the activities listed in Section 1 of this Article will apply to foreign flag vessels and persons not citizens of the United States only to the extent consistent with recognized principles of international law, including treaties and international agreements to which the United States is signatory.

Section 3. *Emergency Regulations.* Where essential to prevent immediate, serious, and irreversible damage to the ecosystem of the area, activities other than those listed in Section 1 may be regulated within the limits of the Act on an emergency basis for an interim period not to exceed 120 days, during which an appropriate amendment of this Article will be proposed in accordance with the procedures specified in Article 6.

#### Article 5. Relation to Other Regulatory Programs

Section 1. *Defense Activities.* The regulation of activities listed in Article 4 shall not prohibit any Department of Defense activity that is essential for national defense or because of emergency. Such activities shall be consistent with the regulations to the maximum extent practical.

Section 2. *Other Programs.* All applicable regulatory programs will remain in effect, and all permits, licenses and other authorizations issued pursuant thereto shall be valid within the Sanctuary unless authorizing any activity prohibited by any regulation implementing Article 4. The Sanctuary regulations will set forth any necessary certification procedures.

#### Article 6. Alterations to This Designation

This Designation can be altered only in accordance with the same procedures by which it has been made, including public hearings, consultation with interested Federal and State agencies and the South Atlantic Regional Fishery Management Council, and approval by the President of the United States.

[End of Designation]

Only those activities listed in Article 4 are subject to regulation in the Sanctuary. Before any additional activities may be regulated, the Designation must be amended through the entire designation procedure including public hearing and approval by the President. Spearfishing and anchoring are listed in Article 4 because of the potential for damage; however, no additional regulation of these activities is proposed at this time.

#### Public Review and Comment

NOAA invites public review and comment on these final regulations. Written comments should be submitted to: Director, Sanctuary Programs Office, Office of Coastal Zone Management, National Oceanic and Atmospheric Administration, 3300 Whitehaven Street, N.W., Washington, D.C. 20235.

Dated: January 19, 1981.

Donald W. Fowler,  
Deputy Assistant Administrator for Coastal Zone Management.

Accordingly, Part 938 is added as follows:

#### PART 938—THE GRAY'S REEF NATIONAL MARINE SANCTUARY REGULATIONS

- |        |  |
|--------|--|
| Sec.   |  |
| 938.1  | Authority.                                   |
| 938.2  | Purpose.                                     |
| 938.3  | Boundaries.                                  |
| 938.4  | Definitions.                                 |
| 938.5  | Allowed activities.                          |
| 938.6  | Prohibited activities.                       |
| 938.7  | Penalties for commission of prohibited acts. |
| 938.8  | Permit procedures and criteria.              |
| 938.9  | Certification of other permits.              |
| 938.10 | Appeals of administrative action.            |
| 938.11 | Amendments.                                  |

Authority: Sec. 302(a), (f), (g) and 303 of Title III, Marine Protection, Research and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431-1434.

##### § 938.1 Authority.

The Sanctuary has been designated pursuant to the authority of Section 302(a) of Title III of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431-1434 (the Act). The following regulations are issued pursuant to the authorities of Sections 302(f), 302(g), and 303 of the Act.

##### § 938.2 Purpose.

The purpose of designating the Sanctuary is to protect and preserve the live bottom ecosystem and other natural resources of the waters of Gray's Reef and to ensure the continued availability of the area as an ecological, research, and recreational resource.

##### § 938.3 Boundaries.

The sanctuary consists of 16.68 square nautical miles of high sea waters off the coast of Georgia. The sanctuary boundary includes all waters within a rectangle starting at coordinate 31° 21' 45" N, 80° 55' 17" W, commencing to coordinate 31° 25' 15" N, 80° 55' 17" W, thence to coordinate 31° 25' 15" N, 80° 49' 42" W, thence to coordinate 31° 21' 45" N, 80° 49' 42" W, thence back to the point of origin.



**§ 938.4 Definitions.**

(a) "Administrator" refers to the Administrator of the National Oceanic and Atmospheric Administration.

(b) "Assistant Administrator" refers to the Assistant Administrator for Coastal Zone Management, National Oceanic and Atmospheric Administration.

(c) "Person" is any private individual, partnership, corporation, or other entity; or any officer, employee, agent, department, agency or instrumentality of the Federal government or any State or local unit of government.

**§ 938.5 Allowed activities.**

All activities except those specifically prohibited by Section 938.6 may be carried out within the Sanctuary subject to all prohibitions, restrictions, and conditions imposed by any other authority.

**§ 938.6 Prohibited activities.**

(a) Except as may be necessary for national defense in accordance with Article 5, Section 2 of the Designation or as may be necessary to respond to an emergency threatening life, property, or the environment, the following activities are prohibited within the Sanctuary unless permitted by the Assistant Administrator in accordance with Section 938.8. All prohibitions will be applied consistently with international law.

**(1) Alteration of or construction on the seabed.**

No person shall dredge, drill, or otherwise alter the seabed in any way nor construct any structure other than a navigation aid without a permit.

**(2) Discharge of substances.**

No person shall deposit or discharge any materials or substances of any kind except:

(i) Fish or parts, bait, and chumming materials;

(ii) Effluent from marine sanitation devices; and

(iii) Vessel cooling waters.

**(3) Operation of watercraft.**

All watercraft shall be operated in accordance with Federal rules and regulations that would apply if there were no Sanctuary.

**(4) Wire trap fishing.**

No person shall use, place, or possess wire fish traps within the Sanctuary without a permit.

**(5) Bottom trawling and specimen dredging.**

No person shall use a bottom trawl, specimen dredge, or similar vessel-towed bottom sampling device within the Sanctuary without a permit.

**(6) Marine specimen collecting.**

(i) No person shall break, cut, or similarly damage, take, or remove any bottom formation, any marine invertebrate, or any marine plant without a permit.

(ii) No person shall take without a permit any tropical fish, which is a fish of minimal sport and food value, usually brightly colored, often used for aquaria purposes, and which lives in a direct relationship with the live bottom community.

(iii) There shall be a rebuttable presumption that any items listed in this paragraph found in the possession of a person within the Sanctuary have been collected or removed from the Sanctuary.

(iv) No person shall use poisons, electric charges, explosives, or similar methods to take any marine animal or plant.

**(7) Removing or damaging historic or cultural resources.**

No person shall tamper with, damage, or remove any historic or cultural resources without a permit.

(b) All activities currently carried out by the Department of Defense within the Sanctuary are essential for the national defense and, therefore, not subject to these prohibitions. The exemption of additional activities having significant impacts shall be determined in consultation between the Assistant Administrator and the Department of Defense.

(c) The prohibitions in this section are not based on any claim of territoriality and will be applied to foreign persons and vessels only in accordance with recognized principles of international law, including treaties, conventions, and other international agreements to which the United States is signatory.

**§ 938.7 Penalties for commission of prohibited acts.**

Section 303 of the Act authorizes the assessment of a civil penalty of not more than \$50,000 against any person subject to the jurisdiction of the United States for each violation of any regulation issued pursuant to the Act, and further authorizes a proceeding in rem against any vessel used in violation of any such regulation.

**§ 938.8 Permit procedures and criteria.**

(a) Any person in possession of a valid permit issued by the Assistant Administrator in accordance with this section may conduct the specific activity in the Sanctuary including any activity specifically prohibited under Section 938.6, if such activity is (1) research related to the resources of the Sanctuary, (2) to further the educational

value of the Sanctuary, or (3) for salvage or recovery operations.

(b) Permit applications shall be addressed to the Assistant Administrator for Coastal Zone Management, Attn: Office of Sanctuary Programs, National Oceanic and Atmospheric Administration, 3300 Whitehaven Street, N.W., Washington, D.C. 20235. An application shall provide sufficient information to enable the Assistant Administrator to make the determination called for in paragraph (c) below and shall include a description of all activities proposed, the equipment, methods, and personnel (particularly describing relevant experience) involved, and a timetable for completion of the proposed activity. Copies of all other required licenses or permits shall be attached.

(c) In considering whether to grant a permit, the Assistant Administrator shall evaluate (1) the general professional and financial responsibility of the applicant, (2) the appropriateness of the methods envisioned to the purpose(s) of the activity, (3) the extent to which the conduct of any permitted activity may diminish or enhance the value of the Sanctuary, (4) the end value of the activity, and (5) other matters as deemed appropriate.

(d) In considering any application submitted pursuant to this section, the Assistant Administrator may seek and consider the views of any person or entity, within or outside of the Federal Government, and may hold a public hearing, as deemed appropriate.

(e) The Assistant Administrator may, at his or her discretion, grant a permit which has been applied for pursuant to this section, in whole or in part, and subject to such condition(s) as deemed appropriate. The Assistant Administrator or a designated representative may observe any permitted activity and/or require the submission of one or more reports of the status or progress of such activity. Any information obtained will be made available to the public.

(f) The Assistant Administrator may amend, suspend or revoke a permit granted pursuant to this section, in whole or in part, temporarily or indefinitely, if the permit holder has violated the terms of the permit or applicable regulations. Any such action will set forth in writing to the permit holder and will include the reason(s) for the action taken. The permit holder may appeal the action as provided for in § 938.10.

**§ 938.9 Certification of other permits.**

(a) All permits, licenses and other authorizations issued pursuant to any



other authority are hereby certified and shall remain valid if they do not authorize any activity prohibited by Section 938.6. Any interested person may request that the Assistant Administrator offer an opinion on whether an activity is prohibited by these regulations.

(b) The Assistant Administrator may amend, suspend, or revoke the certification made under this section whenever continued operation would violate any term or conditions of the certification. Any such action shall be forwarded in writing to both the holder of the certified permit and the issuing agency and shall set forth reason(s) for the action taken. Either the permit holder or the issuing agency may appeal the action as provided for in Section 938.10.

#### § 938.10 Appeals of administrative action.

(a) Any interested person (the Appellant) may appeal the granting, denial, or conditioning of any permit under § 938.8 to the Administrator or NOAA. In order to be considered by the Administrator, such appeal must be in writing, must state the action(s) appealed, and the reason(s) therefore, and must be submitted within 30 days of the action(s) by the Assistant Administrator. The Appellant may request an informal hearing on the appeal.

(b) Upon receipt of an appeal authorized by this section, the Administrator will notify the permit applicant, if other than the Appellant, and may request such additional information and in such form as will allow action upon the appeal. Upon receipt of sufficient information, the Administrator will decide the appeal in accordance with the criteria defined in § 938.8(c) as appropriate, based upon information relative to the application on file at OCZM and any additional information, the summary record kept of any hearing, the Hearing Officer's recommended decision, if any, as provided in paragraph (c), and such other considerations as deemed appropriate. The Administrator will notify all interested persons of the decision and the reason(s) for the decision, in writing, within 30 days of receipt of sufficient information, unless additional time is needed for a hearing.

(c) If a hearing is requested or if the Administrator determines one is appropriate, the Administrator may grant an informal hearing before a designated Hearing Officer after first giving notice of the time, place, and subject matter of the hearing in the *Federal Register*. Such hearing must normally be held no later than 30 days

following publication of the notice in the *Federal Register* unless the Hearing Officer extends the time for reasons deemed equitable. The Appellant, the Applicant (if different) and other interested persons (at the discretion of the Hearing Officer) may appear personally or by counsel at the hearing and submit such material and present such arguments as determined appropriate by the Hearing Officer. Within 30 days of the last day of the hearing, the Hearing Officer shall recommend in writing a decision to the Administrator.

(d) The Administrator may adopt the Hearing Officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Administrator shall notify interested persons of the decision and the reason(s) for the decision, in writing, within 30 days of receipt of the recommended decision of the Hearing Officer. The Administrator's action will constitute final action for the Agency for the purposes of the Administrative Procedures Act.

(e) Any time limit prescribed in this section may be extended for a period not to exceed 30 days by the Administrator for good cause upon written request from the Appellant or Applicant stating the reason(s) for the extension.

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#### 15 CFR Part 937

##### The Looe Key National Marine Sanctuary

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

**ACTION:** Final rule.

**SUMMARY:** The Office of Coastal Zone Management within NOAA is issuing the Designation and final regulations for the Looe Key National Marine Sanctuary, 6.7 nautical miles southwest of Big Pine Key, Florida (the Sanctuary). The Sanctuary was designated on January 16, 1981, after receiving Presidential approval on January 16, 1981. The Designation Document acts as a constitution for the Sanctuary, establishing its boundaries, purposes, and activities subject to regulation. The regulations establish, in accordance with the terms of the Designation, the limitations and prohibitions on activities regulated within the Sanctuary, the procedures by which persons may obtain permits for otherwise prohibited

activities, and the penalties for committing prohibited actions.

**DATE:** These implementing regulations are expected to become effective upon the expiration of a period of 60 calendar days of continuous session of Congress after their transmittal to Congress, concurrent with publication. This 60-day period is interrupted if Congress takes certain adjournments and the continuity of session is broken by an adjournment *sine die*. Therefore, the effective date can be obtained by calling or writing the contact identified below. In addition, notification will be published in the *Federal Register* when the regulations become effective.

**ADDRESS:** NOAA invites public review and comment on these final regulations. Written comments should be submitted to: Director, Sanctuary Programs Office, Office of Coastal Zone Management, National Oceanic and Atmospheric Administration, 3300 Whitehaven Street, N.W., Washington, D.C. 20235.

**FOR FURTHER INFORMATION CONTACT:** Dr. Nancy Foster, Deputy Director, Sanctuary Programs Office, Office of Coastal Zone Management, 3300 Whitehaven Street, N.W., Washington, D.C. 20235, (202) 634-4236.

**SUPPLEMENTARY INFORMATION:** Title III of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431-1434 (the Act) authorizes the Secretary of Commerce, with Presidential approval, to designate ocean waters as far seaward as the outer edge of the continental shelf as marine sanctuaries to preserve or restore distinctive conservational, recreational, ecological, or aesthetic values. Section 302(f)(1) of the Act directs the Secretary to issue necessary and reasonable regulations to control activities permitted within a designated marine sanctuary. The authority of the Secretary to administer the provisions of the Act has been delegated to the Assistant Administrator for Coastal Zone Management within the National Oceanic and Atmospheric Administration, U.S. Department of Commerce (the Assistant Administrator).

On January 16, 1981, the Assistant Administrator received the President's approval to designate as a marine sanctuary a 5.32 square nautical mile (sq nm) area located 6.7 nm southwest of Big Pine Key, Florida. The area was so designated on January 16, 1981.

The Act, as amended by Public Law 96-332, provides that the Designation becomes effective unless Congress disapproves it or any of its terms by a concurrent resolution adopted by both Houses "before the end of the first